

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department of Telecommunications
and Energy on its own motion as to the propriety of the
rates and charges set forth in the following Standby Rate
Tariffs: M.D.T.E. Nos. 136A and 137A, M.D.T.E. Nos.
237C, 238C, 239C, 254A and 255A; and M.D.T.E.
Nos. 337A and 338A, filed on January 16, 2004, to
become effective February 4, 2004, by Boston Edison
Company, Cambridge Electric Light Company, and
Commonwealth Electric Company d/b/a NSTAR Electric.

D.T.E. 03-121

**MOTION OF THE MEMBERS OF THE NE DG COALITION, THE
MASSACHUSETTS DIVISION OF ENERGY RESOURCES, THE JOINT
SUPPORTERS, AND THE CONSERVATION LAW FOUNDATION TO DISMISS THE
CURRENT NSTAR STANDBY RATE CASE AND COMMENCE A NEW RATE CASE
OR IN THE ALTERNATIVE TO DISALLOW CERTAIN REBUTTAL TESTIMONY
AND MODIFY PROCEDURAL SCHEDULE**

The NE DG Coalition¹, the Massachusetts Department of Energy Resources, the Joint Supporters², and the Conservation Law Foundation each hereby move the Department of Telecommunications and Energy (“the Department”), pursuant to 220 CMR 1.04(5) and 1.06(6)(e), to dismiss the January 16, 2004 filing of Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company (“NSTAR Electric”) for the approval of tariffs designed to establish standby rates for large and medium commercial and industrial customers who have their own on-site generation facilities (the Old Proposed Rates”).

¹ American DG, Inc., Aegis Energy Services, Inc., OfficePower, L.L.C., Equity Office Properties Trust, Inc., Northern Power Systems, Inc., RealEnergy, Inc., Tecogen Inc., and Turbosteam Corporation.

² The Boston Public Schools, Co-Energy America, Inc., National Association of Energy Service Companies, Inc., Siemens Building Technologies, District One, Allied Utility Network, LLC, DGSolutions, LLC, Energy Concepts Engineering, PC, Predicate, LLC, Pace Law School Energy Project, and The E Cubed Company, LLC.

The Old Proposed Rates have been superceded and replaced by a new rate filing made on April 21, 2004 (the “New Proposed Rates”) which renders the Old Proposed Rates moot. Accordingly, the Old Proposed Rates should be dismissed, and a new proceeding on the New Proposed Rates should be commenced, with a new rate suspension period running from April 21, 2004.

Alternatively, then the New Proposed Rates, all references to the New Proposed Rates, and all rebuttal testimony relating to the rate design concepts that were not included as part of the Old Proposed Rates, should be stricken and disallowed in the present proceeding and the procedural schedule should be modified to allow the Intervenors adequate and reasonable time to issue and receive discovery regarding the rebuttal testimony that is not stricken.

A. Factual Background

On April 21, 2004, NSTAR Electric filed rebuttal testimony of three witnesses in the present case. The rebuttal testimony of Henry LaMontagne included as an attachment new proposed Standby Rates identified as Attachment NSTAR-HCL-10 (the “New Proposed Rates”).

The New Proposed Rates were filed ostensibly as “modifications” of the Tariffs filed January 16, 2004. The New Rates differ from the Original Rates in significant aspects of substance and form. The notice issued by the Department in this case identifies the following standby rate tariffs: M.D.T.E. Nos. 136A and 137A – Boston Edison Company; M.D.T.E. Nos. 237C, 238C, 239C, 254A and 255A – Cambridge Electric Light Company; and M.D.T.E. Nos. 337A and 338A – Commonwealth Electric Company. *NSTAR Electric*, D.T.E. 03-121 (January 20, 2004) (Notice of Public Hearing and Procedural Conference). The rates filed by the Companies on April 21, 2004 include the following tariffs: M.D.T.E. Nos. 136A, 137A and 138 – Boston Edison Company; M.D.T.E. Nos. 237C, 238C, 254B and 255B – Cambridge Electric Light

Company; and M.D.T.E. Nos. 337A and 338A – Commonwealth Electric Company. Standby tariffs M.D.T.E 138 – Boston Edison Company and M.D.T.E. Nos. 254B and 255B – Cambridge Electric Light Company bear entirely new tariff numbers. In addition to the entirely new tariff sheets, key provisions of the other rates have been modified as well. While we have not had the time to complete a full review of the new tariffs, a list of the changes we have identified to date is attached hereto as Exhibit A.

During the procedural hearing in the case held on April 22, 2004, the NEDGC, the DOER and the Joint Supporters all registered objections to the introduction of new rates at this late moment in the case. In addition to the new rates, NSTAR filed rebuttal testimony by three witnesses amounting to more than one hundred pages, far in excess of the original filed direct testimony. Intervenors sought an opportunity to seek and review discovery on the rebuttal testimony, prior to conducting cross-examination of the rebuttal witnesses. Over the objections of utility company counsel, the Hearing Officer, Mr. Stevens, granted the Intervenors until Monday, April 26 to file discovery requests on the rebuttal testimony. He required NSTAR to produce answers by May 3. NSTAR stated it would try to comply but noted the difficulty of conducting discovery during the conduct of a hearing.

B. Standard of Review

1. Rate Filings

G.L. c. 164, §94 grants the Department authority to approve and regulate the all rates imposed by electric and gas companies which are subject to the Department's jurisdiction. Section 94 requires that "electric companies shall file with the Department schedules showing all rates, prices and charges to be thereafter charged or collected within the commonwealth for the

sale and distribution of ... electricity.” Section 94 permits electric companies to change their rates “from time to time” by filing new schedules “setting forth the changed rates, prices and charges.” Whenever the Department receives “any changes to be made in any schedule filed” under §94, the Department must, after proper notice, “make an investigation as to the propriety of such proposed changes.” G.L. c. 164, §94.

2. Rate Changes

The Department has jurisdiction over the entire rate structure. *Boston Edison Company v. Department of Public Utilities*, 375 Mass. 1, 47 (1978) citing *Boston Real Estate Board v. Department of Public Utilities*, 334 Mass. 477, 485 (1956). Accordingly, the Department’s regulations require that schedules “show not only the price or unit upon which based, but any and all meter rentals, service charges, basis for determining demand, discounts and other detail necessary for a complete understanding of the charges contemplated.” 220 CMR 5.02(3). Therefore, “any changes to made in any schedule” constitutes a rate change and hence a new rate filing. G.L. c. 164, §94.

The Department’s regulations further provide that each “tariff or schedule shall be designated by an individual number progressing from that last filed by the same party” preceded by the letters “M.D.T.E.”. 220 CMR 5.02(4).

Neither 220 CMR 5.00 nor c. 164 §94 provides for the filing of an amended rate by a company in the course of an investigation. To the contrary, both the regulations and the statute contemplate that “any changes made in any schedule” constitutes a new rate filing and requires

separate investigation by the Department.³ With respect to any on-going investigation, c. 164, §94 provides only that an “order by the Department directing a change in any schedule filed shall have the same effect as if a schedule with such changes were filed by the company, and shall become effective from such time as the Department shall order.” This provision authorizes a compliance filing by the company pursuant to a Department order. It does not permit a company to change its filing unilaterally in the course of a proceeding.

3. Suspension of Rates

Under G.L. c. 164, §94, the Department “may investigate the propriety of any rate, price or charge and may, pending such investigation and decision thereon,...suspend taking of effect thereof....” The Department may suspend proposed rates for a maximum of six months, G.L. c. 25, §18. No hearing is required to suspend the rates nor is the Department obligated to make any findings in support of its suspension order. *Boston Gas Company v. Department of Public Utilities*, 368 Mass. 51, 54 (1975). Nor is the Department’s discretionary decision to suspend filed rates subject to judicial review. *Id.* at 54, 56.

There is no limitation on how frequently a company may submit changes to rate schedules. G.L. c. 164, §94. However, each new change to a rate schedule may be suspended for up to six months. *Massachusetts Electric Company v. Department of Public Utilities*, 383 Mass. 675, 677 (1981). The Department is not required to consider changes to rate schedules filed by the company in the course of a proceeding within the original six-month suspension period. Such a requirement would inhibit the Department’s statutory obligation to conduct a

³ 220 CMR 1.04(3) provides for amendment of an “initial pleading” with leave of the Department, but 220 CMR 1.00 distinguishes between an “initial pleading” and a “tariff”. Compare 220 CMR 104(d) (Protest of a Tariff).

thorough investigation of the new rate changes. Each change to a rate schedule constitutes a new filing under the statute and the Department is authorized to suspend each such change for a maximum of six months from the date they were filed. *Id.* It is also well established that a rate-filer can through its action waive its statutory right to have a proceeding concluded within six months. See *Commonwealth Gas Company*, D.P.U. 91-60 (October 31, 1991) at 2.

C. Discussion

1. The Department should dismiss the January 16, 2004 filing of NSTAR Electric for the approval standby rates and commence a new proceeding, with a rate suspension period running from April 21, 2004, the date of filing of new standby rates

The New Proposed Rates filed by NSTAR on April 21, 2004 comprise a new tariff filing, replacing the Old Proposed Rates originally proposed on January 16, 2004. NSTAR concedes that the New Proposed Rates are new both in their rebuttal testimony and implicitly in the fact that the New Proposed Rates have been assigned new tariff numbers. Moreover, Attachment A attached hereto lists the significant differences between New Proposed Rates and the Old Proposed Rates. That been said, our review of the New Proposed Rates and the changes contemplated therein is not yet complete. To fully and fairly consider these rates, we need time for analysis and discovery.

More importantly, there is no basis in the law for allowing such new or amended tariffs to be allowed into the record in the present proceeding. The introduction of a new tariff effectively replaces the original tariff filed. The Original Proposed Rates are therefore moot and should be dismissed. To the extent the Proposed New Rates represent an evolution in NSTAR's approach to standby rate design, we urge the Department to accept the New Rate filing, but demand that

proper time and consideration be given to fully understand the assumptions, reasoning and facts underlying the new Rates. In order to fully consider the new rates, it is proper and appropriate that the Department commence a new rate case, with a new suspension period, in order to allow a full review of the New Proposed Rates by the Department and interested parties as well.

2. Alternatively, the Department should strike the New Proposed Tariffs and all testimony relating thereto

If the Department feels compelled to complete the present proceeding as originally filed, then the New Proposed Rates should be stricken from the record, together with all testimony that relates to the design of New Proposed Rates. Neither the Department, nor the Intervenors can reasonably be expected to complete a full and thorough review of the New Proposed Rates and related testimony in the next few days prior to the hearing. Certainly there is not sufficient time to conduct full discovery and analysis of the rates. NSTAR could have designed their Old Proposed Rates any way it saw fit. To submit New Proposed Rates at the very end of the process on the eve of hearings is an abuse of the process and an effort to short-change the Department's responsibility to review and approve rates that should not be rewarded.

We therefore request that the following sections of the Rebuttal Testimony be disallowed and stricken from the record: Mr. LaMontagne's testimony at Page 21, lines 1-23; Page 22, lines 1-10; Page 28, lines 17-23; Page 29, lines 1-16; Exhibit NSTAR-HCL-9 and Exhibit NSTAR-HCL-10; and Dr. Parmesano's testimony at Page 3, line 14 (starting with "NSTAR") through line 18; Page 13, lines 3-13; Page 13, line 24 through Page 14, line 2. We note this list is not necessarily complete as it was compiled under significant time pressure and would ask that any additional references to the New Proposed Rates be also stricken.

In addition, the time for discovery of the rebuttal testimony is so short as to render the opportunity nearly meaningless. Discovery must be filed by Monday, April 26. Given that the volume of rebuttal testimony far exceeds the testimony originally filed, three days (one of which was taken up in the preparation of this motion), is too short to conduct a full and fair review and formulate and file information requests. We recognize that some of the utility counsel would prefer no discovery on the rebuttal case, but we submit that is not reasonable. More importantly, discovery responses on the rebuttal case are tentatively scheduled to be produced by close of business on May 3, which is the fourth of six scheduled hearing days. Even assuming discovery material was produced on time⁴, Intervenors cannot reasonably be expected to digest and analyze discovery material in order for use at a hearing within one day. Such a requirement does a disservice to the legitimacy of the proceeding.

CONCLUSION

For the foregoing reasons, the Department should dismiss NSTAR Electric's Original rate filing and commence a new case to consider the New Proposed Rates filed on April 21. In the alternative, the Department should (1) disallow all testimony relating to the New Proposed Rates and order it stricken from the rebuttal testimony and (2) modify the procedural schedule to allow Intervenors adequate time to review discovery information and cross examine the rebuttal witnesses after such review. We note the Department reserved May 11 as a day for additional hearing and suggest that the rebuttal witnesses be made available on that date or thereafter for cross-examination.

The NE DG Coalition

⁴ At the procedural hearing on April 22, NSTAR expressed some concern about their ability to produce discovery material during hearings.

By their attorneys,

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Dated: April 23, 2004

Attachment A

Modifications Proposed for NSTAR Filed Tariffs

Boston Edison SB-1

-Change applicable rate class

FILED: G-3 and T-2

MODIFIED: only T-2

-Change size threshold for applicability of standby service.

FILED: Applicable to customers with any portion of load from DG and Nameplate greater than 60 kW

MODIFIED:

Applicable to customers with $\geq 20\%$ of load from DG and nameplate greater than 60kW

(or)

Nameplate greater than 500 kW

-Change Rates

Standby

FILED:	Distribution (Charge):	<u>October-May</u>	<u>June-September</u>
	Contract Demand	8.18	17.51 per kW

MODIFIED:

Distribution (Charge):	<u>October-May</u>	<u>June-September</u>
Contract Demand <1000kW	6.87	14.71 per kW
Contract Demand ≥ 1000 kW	8.18	17.51 per kW

-Change Adjustments to Supplemental Rates

FILED: In the case of an outage or reduction in output of the customer generation below the Contract Demand, the interval demands used to determine the billing demand for distribution charges under this Supplemental Delivery Service will be reduced by the difference between the amount of the Contract Demand and the actual output of the Generation Unit(s) for the period of the reduction or outage. Such reduction will not be greater than the metered supplemental demand.

MODIFIED: In the case of an outage or reduction in output of the customer generation below the Contract Demand, the interval demands used to determine the billing demand for distribution charges under this Supplemental Delivery Service will be reduced for the period of the outage or reduction according to the following:

- a. Contract Demand <1000kW-
By 84.0% of (the Contract Demand less the actual output of the Generation Unit(s)).
- b. Contract Demand \geq 1000kW-
By the Contract Demand less the actual output of the Generation Unit(s).

Such reduction will not be greater than the metered supplemental demand.

Boston Edison SB-2

-Change size threshold for applicability of standby service.

FILED: Applicable to customers with any portion of load from DG and Nameplate greater than 60 kW

MODIFIED:
Applicable to customers with \geq 20% of load from DG and nameplate greater than 60kW
(or)
Nameplate greater than 500 kW

-Change Rates

Standby

FILED:
Distribution
(Oct-May) >10 kW 12.42 per kW
(Jun-Sep) > 10kW 24.26 per kW

MODIFIED:
Distribution

(Oct-May) >10 kW	10.43 per kW
(Jun-Sep) > 10kW	20.38 per kW

Supplemental

FILED:

Distribution

(Oct-May) >10 kW	12.42 per kW
(Jun-Sep) > 10kW	24.26 per kW

MODIFIED:

Distribution

(Oct-May)	12.42 per kW
(Jun-Sep)	24.26 per kW

-No Change Adjustments to Supplemental Rates.

Boston Edison SB-3 (New Rate Class)

-Change Applicable Rate Class:

FILED: G-3 was on SB-1

MODIFIED: G-3 is on SB-3 (a new rate class)

-Change size threshold for applicability of standby service.

FILED: Applicable to customers with any portion of load from DG and Nameplate greater than 60 kW

MODIFIED:

Applicable to customers with >=20% of load from DG and nameplate greater than 60kW
(or)
Nameplate greater than 500 kW

-Change Rates

FILED:	Distribution (Charge):	<u>October-May</u>	<u>June-September</u>
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Contract Demand	5.58	11.66 per kW
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MODIFIED:

Distribution (Charge):	<u>October-May</u>	<u>June-September</u>
Contract Demand <1000kW	3.98	8.31 per kW
Contract Demand >=1000kW	5.58	11.66 per kW

-Change Adjustments to Supplemental Rates

FILED: In the case of an outage or reduction in output of the customer generation below the Contract Demand, the interval demands used to determine the billing demand for distribution charges under this Supplemental Delivery Service will be reduced by the difference between the amount of the Contract Demand and the actual output of the Generation Unit(s) for the period of the reduction or outage. Such reduction will not be greater than the metered supplemental demand.

MODIFIED: In the case of an outage or reduction in output of the customer generation below the Contract Demand, the interval demands used to determine the billing demand for distribution charges under this Supplemental Delivery Service will be reduced for the period of the outage or reduction according to the following:

- a. Contract Demand <1000kW-
By 71.3% of (the Contract Demand less the actual output of the Generation Unit(s)).
- b. Contract Demand >=1000kW-
By the Contract Demand less the actual output of the Generation Unit(s).

Such reduction will not be greater than the metered supplemental demand.

Cambridge Electric SB-2

-Change size threshold for applicability of standby service.

FILED: Applicable to customers with any portion of load from DG and Nameplate greater than 60 kW

MODIFIED:
Applicable to customers with >=20% of load from DG and nameplate greater than 60kW
(or)
Nameplate greater than 500 kW

-Change Rates-

Standby

FILED:

Distribution

Contract Demand

First 100 kVA	\$2.98 per kVA
Over 100 kVA	\$3.95 per kVA

MODIFIED:

Distribution

Contract Demand <1000kVA

First 100 kVA	\$1.90 per kVA
Over 100 kVA	\$2.51 per kVA

Contract Demand >=1000kVA

First 100 kVA	\$2.98 per kVA
Over 100 kVA	\$3.95 per kVA

Supplemental

FILED:

Distribution

First 100 kVA	\$2.98 per kVA
Over 100 kVA	\$3.95 per kVA

MODIFIED:

Distribution

\$3.95 per kVA

-Change Adjustments to Supplemental Rates

FILED: In the case of an outage or reduction in output of the customer generation below the Contract Demand, the interval demands used to determine the billing demand for distribution charges under this Supplemental Delivery Service will be reduced by the difference between the amount of the Contract Demand and the actual output of the Generation Unit(s) for the period of the reduction or outage. Such reduction will not be greater than the metered supplemental demand.

MODIFIED: In the case of an outage or reduction in output of the customer generation below the Contract Demand, the interval demands used to determine the billing demand for distribution charges under this Supplemental Delivery Service will be reduced for the

period of the outage or reduction according to the following:

- a. Contract Demand <1000kW-
 - i. If the Generation Unit Output is equal to or greater than 100kVA, by 63.6% of (the Contract Demand less the actual output of the Generation Unit(s)).
 - ii. If the Generation Unit Output is less than 100kVA, by the sum of 27.5% (of 100 less the Generation Unit Output) and (63.5% of the Contract Demand Minus 100).
- b. Contract Demand \geq 1000kW-
 - i. If the Generation Unit Output is equal to or greater than 100kVA, by the Contract Demand less the actual output of the Generation Unit(s)).
 - ii. If the Generation Unit output is less than 100kVA, by the sum of (100 less the Generation Unit Output) and (the Contract demand minus 100).

Such reduction will not be greater than the metered supplemental demand.

Cambridge SB-3

- Change size threshold for applicability of standby service.

FILED: Applicable to customers with any portion of load from DG and Nameplate greater than 60 kW

MODIFIED:
Applicable to customers with \geq 20% of load from DG and nameplate greater than 60kW
(or)
Nameplate greater than 500 kW

-Change Rates-

Standby

FILED:

Distribution

Contract Demand

First 100 kVA

\$ 0.00 per kVA

Over 100 kVA

\$ 1.47 per kVA

MODIFIED:

Distribution

Contract Demand <1000kVA

First 100 kVA	\$0.00 per kVA
Over 100 kVA	\$0.65 per kVA
Contract Demand ≥ 1000 kVA	
First 100 kVA	\$0.00 per kVA
Over 100 kVA	\$1.47 per kVA

Supplemental

FILED:

Distribution

First 100 kVA	\$0.00 per kVA
Over 100 kVA	\$1.47 per kVA

MODIFIED:

Distribution

\$1.47 per kVA

-Change Adjustments to Supplemental Rates

FILED: In the case of an outage or reduction in output of the customer generation below the Contract Demand, the interval demands used to determine the billing demand for distribution charges under this Supplemental Delivery Service will be reduced by the difference between the amount of the Contract Demand and the actual output of the Generation Unit(s) for the period of the reduction or outage. Such reduction will not be greater than the metered supplemental demand.

MODIFIED: In the case of an outage or reduction in output of the customer generation below the Contract Demand, the interval demands used to determine the billing demand for distribution charges under this Supplemental Delivery Service will be reduced for the period of the outage or reduction according to the following:

- c. Contract Demand < 1000 kW-
 - iii. If the Generation Unit Output is equal to or greater than 100kVA, by 44.1% of (the Contract Demand less the actual output of the Generation Unit(s)).
 - iv. If the Generation Unit Output is less than 100kVA, by the sum of (100 less the Generation Unit Output) and (44.1% of the Contract Demand minus 100).
- d. Contract Demand ≥ 1000 kW-
 - iii. If the Generation Unit Output is equal to or greater than 100kVA, by the Contract Demand less the actual output of the Generation Unit(s).
 - iv. If the Generation Unit output is less than 100kVA, by the sum of (100 less the Generation Unit Output) and (the Contract demand minus 100).

Such reduction will not be greater than the metered supplemental demand.

Commonwealth SB-1

-Change size threshold for applicability of standby service.

FILED: Applicable to customers with any portion of load from DG and Nameplate greater than 60 kW

MODIFIED:
Applicable to customers with $\geq 20\%$ of load from DG and nameplate greater than 60kW
(or)
Nameplate greater than 500 kW

-Change Rates

Standby

FILED: Distribution (Charge):
Contract Demand \$3.00 per kVa

MODIFIED:
Distribution (Charge):
Contract Demand \$2.65 per kVa

-Change Adjustments to Supplemental Rates

FILED: In the case of an outage or reduction in output of the customer generation below the Contract Demand, the interval demands used to determine the billing demand for distribution charges under this Supplemental Delivery Service will be reduced by the difference between the amount of the Contract Demand and the actual output of the Generation Unit(s) for the period of the reduction or outage. Such reduction will not be greater than the metered supplemental demand.

MODIFIED: In the case of an outage or reduction in output of the customer generation below the Contract Demand, the interval demands used to determine the billing demand for distribution charges under this Supplemental Delivery Service will be reduced by 88.4% of the difference between the amount of the Contract Demand and the actual output of the Generation Unit(s) for the period of the reduction or outage. Such

reduction will not be greater than the metered supplemental demand.

Commonwealth SB-2

-Change size threshold for applicability of standby service.

FILED: Applicable to customers with any portion of load from DG and Nameplate greater than 60 kW

MODIFIED:
Applicable to customers with $\geq 20\%$ of load from DG and nameplate greater than 60kW
(or)
Nameplate greater than 500 kW

-Change Rates

Standby

FILED: Distribution (Charge):
Contract Demand \$4.97 per kVa

MODIFIED:
Distribution (Charge):
Contract Demand \$4.39 per kVa

-Change Adjustments to Supplemental Rates

FILED: In the case of an outage or reduction in output of the customer generation below the Contract Demand, the interval demands used to determine the billing demand for distribution charges under this Supplemental Delivery Service will be reduced by the difference between the amount of the Contract Demand and the actual output of the Generation Unit(s) for the period of the reduction or outage. Such reduction will not be greater than the metered supplemental demand.

MODIFIED: In the case of an outage or reduction in output of the customer generation below the Contract Demand, the interval demands used to determine the billing demand for distribution charges under this Supplemental Delivery Service will be reduced by 88.4% of the difference between the amount of the Contract Demand and the actual output of the Generation Unit(s) for the period of the reduction or outage. Such

reduction will not be greater than the metered supplemental demand.

CERTIFICATE OF SERVICE

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 03-121

I hereby certify that I have this day served the foregoing Motion to Dismiss upon all parties of record in this proceeding in accordance with the requirements of 220 CMR 1.05(1) (Department's Rules of Practice and Procedure).

Dated at Boston this 23rd day of April, 2004

Roger M. Freeman

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